

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

ANN ELIZABETH HOWARD, et al.,  
Plaintiffs,

V.

CIVIL NO. 05-1928 (RLA)

GREGORIO FELICIANO, et al.,  
Defendants.

**ORDER DENYING DEFENDANTS' POST TRIAL MOTION**

Codefendants the COMMONWEALTH OF PUERTO RICO ("COMMONWEALTH") and the PUERTO RICO DEPARTMENT OF EDUCATION ("DOE") have moved the court to either order a new trial or a remittitur of the sums awarded plaintiff at the conclusion of the jury trial pursuant to the provisions of Rule 59 Fed. R. Civ. P.

The court having reviewed the evidence presented during the proceedings as well as the applicable law hereby rules as follows.

## BACKGROUND

This action was initially instituted by the parents of the minor ROBERT ALMODOVAR HOWARD ("ROBERT") suing on their own behalf and in representation of their son alleging, *inter alios*, discriminatory harassment based on race and national origin under myriad federal and local statutes. The parent's individual causes of action as well as

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2 most of ROBERT's claims were dismissed prior to trial.<sup>1</sup> Further, the  
3 minor's race discrimination claim under 42 U.S.C. § 1981 was  
4 dismissed at the conclusion of plaintiff's case in chief pursuant to  
5 Rule 50(a) Fed. R. Civ. P. Only ROBERT's national origin claims  
6 against the COMMONWEALTH and the DOE asserted under Title VI of the  
7 Civil Rights Act of 1964, 42 U.S.C. § 2000d, as well a tort claim  
8 pursued against GREGORIO FELICIANO ("FELICIANO"), the minor's teacher  
9 individually, under our supplemental jurisdiction, Laws of P.R. Ann.  
10 tit. 31, § 5141 (1990), were submitted to the jury for deliberation.  
11

12 The jury found the COMMONWEALTH and the DOE liable under Title  
13 VI and awarded plaintiff the sum of \$1 million dollars in damages.  
14 MR. FELICIANO was found liable under the Puerto Rico negligence  
15 statute in the sum of \$25,000.00.

16 In support of their motion, defendants raised the following  
17 arguments:

- 18 - the damages award was not supported by the evidence and/or  
19 was excessive;
- 20 - the damages award was not supported by medical evidence;
- 21 - the verdict is against the clear weight of the evidence;
- 22 - during his closing argument plaintiff's counsel wrongly  
23 instructed the jury to assign a specific amount in damages,  
24 and

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25 <sup>1</sup> See Order in the Matter of Defendants' Motion for Summary  
26 Judgment (docket No. 118).

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2 - the verdict was the result of undue passion and prejudice.

3 Inasmuch as these arguments are related to the evidence  
4 presented both on liability and damages during trial we shall address  
5 them separately.6 **RULE 59**7 **New Trial**8 Trial judges "may grant a new trial only if they are convinced  
9 that the verdict is against the clear weight of the evidence, such  
10 that letting it stand would result in a miscarriage of justice."11 Valentin-Almeyda v. Mun. of Aguadilla, 447 F.3d 85, 104 (1<sup>st</sup> Cir.  
12 2006).13 "The decision to grant a new trial is squarely within the trial  
14 court's discretion... Such deference to the trial court is  
15 particularly appropriate in cases in which the jury's verdict is  
16 challenged as against the weight of the evidence because a jury's  
17 verdict on the facts should only be overturned in the most compelling  
18 circumstances." Velazquez v. Figueroa-Gomez, 996 F.2d 425, 427 (1<sup>st</sup>  
19 Cir. 1993) (quotations and citations omitted).20 "A trial judge may not upset the jury's verdict merely because  
21 he or she might have decided the case differently. On the contrary,  
22 a trial judge may grant a new trial only if she believes that the  
23 outcome is against the clear weight of the evidence such that  
24 upholding the verdict will result in a miscarriage of justice."25 *Id.* 996 F.2d at 428 (quotations and citations omitted).  
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3        "[The court] will uphold the jury's verdict unless the evidence  
4 points to one conclusion and one conclusion only: that the losing  
5 party was entitled to win." Goulet v. New Penn. Motor Exp., Inc., 512  
6 F.3d 24, 44 (1<sup>st</sup> Cir. 2008) (quotations and citations omitted).  
7

8        "[A] jury's verdict on the facts should only be overturned in  
9 the most compelling circumstances." *Id.* 512 F.3d at 44 (quotations  
10 and citations omitted).  
11

12        "In a post-verdict motion for a new trial, the evidence is  
13 viewed in the light most favorable to the verdict." Baron v. Suffolk  
14 County Sheriff's Dep't., 402 F.3d 225, 245 (1<sup>st</sup> Cir. 2005).  
15

#### 16                    **Title VI**

17        Title VI<sup>2</sup> prohibits the intentional discrimination of persons  
18 participating in a program or activity receiving federal financial  
19 assistance. Alexander v. Sandoval, 532 U.S. 275, 280, 212 S.Ct. 1511,  
20 149 L.Ed.2d 517 (2001); Jackson v. Katy Independent Sch. Dist., 951  
21 F.Supp. 1293, 1298 (S.D. Tex. 1996).  
22

23                    

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<sup>2</sup> Title VI provides:

24                    No person in the United States shall, on  
25 the ground of race, color or national origin, be  
26 excluded from participation in, be denied the  
27 benefits of, or be subjected to discrimination  
28 under any program or activity receiving Federal  
29 financial assistance.

30                    42 U.S.C. § 2000d.  
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3 Title VI and Title IX, 20 U.S.C. § 1681 have been interpreted in  
4 *pari materia*. See, Barnes v. Gorman, 536 U.S. 181, 185, 122 S.Ct.  
5 2097, 153 L.Ed.2d 230 (2002) ("Court has interpreted Title IX  
6 consistently with Title VI"); Cannon v. Univ. of Chicago, 441 U.S.  
7 677, 696, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979) ("The drafters of  
8 Title IX explicitly assumed that it would be interpreted and applied  
9 as Title VI had been during the preceding eight years"); Steel v.  
10 Alma Public Sch. Dist., 162 F.Supp.2d 1083, 1085 (W.D.Ark. 2001)  
11 (Title IX and Title VI are parallel to each other and operate in the  
12 same manner"); Mock v. South Dakota Bd. of Regents, 267 F.Supp. 1017,  
13 1019 (D.S.D. 2003) ("Title VI and Title IX may be used  
14 interchangeably in analyzing similar issues under both titles.")

15 In order to prevail in his hostile environment claim under Title  
16 VI, ROBERT had to establish that he was a student, subjected to  
17 discrimination based upon his national origin and that the  
18 discrimination was sufficiently severe and pervasive as to create an  
19 abusive educational environment. Bryant v. Indep. Sch. Dist. No. I-38  
20 of Garvin County, Oklahoma, 334 F.3d 928, 934 (10<sup>th</sup> Cir. 2003); Rubio  
21 v. Turner Unified School Dist. No. 202, 523 F.Supp.2d 1242, 1251  
22 (D.Kan. 2007).

23 Further, the Government may be found liable only if notice was  
24 given to one of its officials who was capable of taking the necessary  
25 action to end the discriminatory conduct. "[D]amages remedy will not  
26 lie under [Title VI] unless an official who at a minimum has

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2 authority to address the alleged discrimination and to institute  
3 corrective measures on the recipient's behalf has actual knowledge of  
4 discrimination in the recipient's programs and fails adequately to  
5 respond." Gebster v. Lago Vista Sch. Dist., 524 U.S. 274, 290, 118  
6 S.Ct. 1989, 141 L.Ed.2d 277 (1998) (discussing Title IX).  
7

### The Evidence

8 The parties stipulated and the jury was so instructed that, for  
9 purposes of the claims asserted by plaintiff pursuant to Title VI,  
10 the DOE was a recipient of federal funds.  
11

12 Codefendant GREGORIO FELICIANO was the 7<sup>th</sup> grade mathematics  
13 teacher at the "20 de Septiembre de 1988" Intermediate School in  
14 Vieques, Puerto Rico, during the 2003-2004 school year.  
15

16 On January of 2004, plaintiff was enrolled by his parents in the  
17 "20 de Septiembre de 1988" School. School officials were opportunely  
18 informed that ROBERT suffered from Attention Deficit Hyperactivity  
19 Disorder ("A.D.H.D.") and Asperger's Syndrome (a high functioning  
20 form of autism) which entitled him to special education program  
21 services. ROBERT had been a special education student since first  
22 grade in stateside schools and had adequately performed until  
23 attending FELICIANO's math class.  
24

25 There was uncontradicted evidence presented at trial of the  
26 following:  
27

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- 2 1. Numerous posters were displayed by FELICIANO in his  
3 classroom with derogatory comments against "gringos"<sup>3</sup> a  
4 category of which plaintiff was the sole member in the  
5 classroom.
- 6 2. Numerous occasions when FELICIANO would make derogatory  
7 anti-American remarks in the classroom and would directly  
8 look "meanly"<sup>4</sup> at plaintiff.
- 9 3. Following plaintiff and calling him a "son of a bitch  
10 American", "asshole" and "American jerk".<sup>5</sup>
- 11 4. In the Grades Report for the second cycle plaintiff  
12 received a "C" in his mathematics class as FELICIANO  
13 announced to the class "I am going to give gringo Robert a  
14 C because he is American."<sup>6</sup> The final grade report showed  
15 that ROBERT got A's in all his classes, except for a B in  
16 science and C in mathematics.
- 17 5. FERDINAND ALMODOVAR PACHECO, plaintiff' father, sent a  
18 letter to DR. CESAR A. REY-HERNANDEZ, the then Secretary of  
19 Education, and other DOE officials informing them that his  
20 son had been the object of discrimination on the part of

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22 <sup>3</sup> A derogatory or denigrating description of an American  
23 citizen.

24 <sup>4</sup> Testimony of ROBERT Trial Tr. 21 Lines 12-14.

25 <sup>5</sup> Testimony of ROBERT Trial Tr. 24 Lines 4-6; 26 Lines 20-22;  
26 Line 24 - 26 Line 12.

<sup>6</sup> Testimony of ROBERT Trial Tr. 9 Lines 10-12.

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2 GREGORIO FELICIANO and demanding that they take appropriate  
3 action.

4 6. ROBERT's parents obtained a court restraining order against  
5 FELICIANO because they feared for their son's personal  
6 safety after their grievances to the DOE officials were met  
7 with no response whatsoever even though FELICIANO continued  
8 to follow plaintiff giving him mean looks and making  
9 denigrating remarks concerning his national origin.

10 7. MR. ALMODOVAR complained to the school principal regarding  
11 the math teacher's intolerable behavior without any  
12 results. As a matter of fact, the school principal  
13 acknowledged that despite the multiple complaints received  
14 not only from the ALMODOVAR family but from other parents  
15 regarding FELICIANO's disparaging and oppressive style in  
16 the classroom her reaction was solely limited to summoning  
17 the teacher to her office and verbally calling his  
18 attention to his behavior without any further action or  
19 results.

20 8. Faced with no further action by the pertinent school  
21 authorities the ALMODOVARs felt compelled, in order to  
22 avoid further harassment, to uproot the family and take  
23 their son back to the United States.

24 9. It was not until after ROBERT had returned to Connecticut  
25 because of the DOE's failure to take any action against

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2 GREGORIO FELICIANO's harassment of their son that the  
3 teacher was transferred to another school.

4 The overwhelming evidence presented at trial supports  
5 plaintiff's hostile environment claim as well as the lack of adequate  
6 response on the part of the government officials to the parent's  
7 complaints. Hence, we find the verdict on the issue of liability  
8 against the COMMONWEALTH and the DOE amply supported.

9 **Damages**

10 Defendants allege that the fact that plaintiff's counsel  
11 suggested damages in the specific amount of \$2.3 million to the jury  
12 during his closing argument justifies that the verdict be  
13 disregarded. When this incident occurred, the court immediately  
14 reprimanded the attorney and issued a contemporaneous limiting  
15 instruction to the jury to completely and utterly disregard the sum  
16 mentioned. This *specific* instruction was reiterated during the final  
17 instructions.

18 "Because [defendant] asks us to review a jury award of damages  
19 for excessiveness, we must examine the evidence in the light most  
20 favorable to the award, drawing all possible inferences in its  
21 favor." Smith v. Kmart Corp., 177 F.3d 19, 21 (1<sup>st</sup> Cir. 1999). "In  
22 reviewing an award of damages, the district court is obliged to  
23 review the evidence in the light most favorable to the prevailing  
24 party and to grant remittitur or a new trial on damages only when the  
25 award exceeds any rational appraisal or estimate of the damages that

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2 could be based upon the evidence before it." Baron, 402 F.3d at 245  
3 (quotations and citations omitted). A jury "award will not be  
4 overturned unless it is grossly excessive or so high as to shock the  
5 conscience of [the] court." Valentin-Almeyda, 447 F.3d at 103.  
6

7 "District courts may grant a motion for new trial or remittitur  
8 only if the award exceeds any rational appraisal or estimate of the  
9 damages that could be based on the evidence before the jury and is  
10 grossly excessive, inordinate, shocking to the conscience of the  
11 court or so high that it would be a denial of justice to permit it to  
12 stand." Franceschi v. Hosp. Gen. San Carlos, Inc., 420 F.3d 1, 5 (1<sup>st</sup>  
13 Cir. 2005) (quotations and citations omitted). See also, Laaperi v.  
14 Sears, Roebuck & Co., Inc., 787 F.2d 726, 735 (1<sup>st</sup> Cir. 1986)  
15 ("[verdict] so clearly in excess of any rational appraisal of  
16 [plaintiff's] actual damages that it may not stand.")

17 Substituting the jury's assessment of the damages is limited to  
18 extreme situations. "[T]he obstacles which stand in the path of such  
19 claims of excessiveness are formidable ones. Translating legal damage  
20 into money damages is a matter peculiarly within a jury's ken,  
21 especially in cases involving intangible non-economic losses." Smith  
22 v. Kmart Corp., 177 F.3d at 30 (citations and internal quotation  
23 marks omitted). Further, "the judge's remittitur figure must be  
24 within the range rationally supported by evidence." Rodriguez-  
25 Quiñones v. Jimenez & Ruiz, S.E., 402 F.3d 251, 257 (1<sup>st</sup> Cir. 2005).  
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3       Once the court decides that a remittitur is warranted, plaintiff  
4       will be allowed the option of either accepting the reduced amount or  
5       a new trial. Liberty Mut. Ins. Co. v. Continental Cas. Co., 771 F.2d  
5       579, 588 (1<sup>st</sup> Cir. 1985).

7       The minor's mental suffering during the unnecessarily prolonged  
8       ordeal at school was described in detail at trial by plaintiff and  
his parents as follows:

1. Plaintiff's loss of his social skills and friends which he had developed on Vieques which, as an autistic child, were very difficult to achieve. He felt "damaged"<sup>7</sup> to the point he engaged in self-mutilation and attempted to commit suicide.
  2. The argument between the minor's mother and father over whether or not to uproot the family and leave Vieques left him in a state of anguish and despair manifested by his constant crying and dark moods which also affected his relationship with his parents.
  3. The uprooting of plaintiff and his family where the autistic plaintiff had developed, for the first time, a circle of friends and where he enjoyed the happiest moments of his life. Plaintiff also felt depressed over the fact that his family had to discontinue building the house that was going to be their permanent home in Vieques.

<sup>7</sup> Testimony of ROBERT Trial Tr. 15 Lines 11-13.

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2  
3 4. When plaintiff returned to the mainland he underwent  
4 therapy treatment for anxiety disorder and depression. He  
5 was prescribed medications and treated at a children's  
6 psychiatric hospital where he was placed on a suicide  
7 watch.<sup>8</sup>

8 **CONCLUSION**

9 Based on the evidence presented at trial, we are convinced that  
10 the one million dollar award assessed against the COMMONWEALTH and  
11 the DOE is adequately supported and will not be disturbed.

12 Accordingly, defendants' Motion (docket No. **149**)<sup>9</sup> is **DENIED**.

13 IT IS SO ORDERED.

14 San Juan, Puerto Rico, this 31<sup>st</sup> day of October, 2008.

15 \_\_\_\_\_  
16 S/Raymond L. Acosta  
RAYMOND L. ACOSTA  
17 United States District Judge

22  
23 <sup>8</sup> With respect to defendants' claim that the damages award was  
24 not supported by expert medical evidence, it is well established in  
25 this circuit that expert testimony is not a sine qua non to uphold an  
award for emotional distress. Muñiz-Olivari v. Stiffel Labs. Inc.,  
496 F.3d 29, 40 (1<sup>st</sup> Cir. 2007); Sanchez v. P.R. Oil Co., 37 F.3d 712,  
724 (1<sup>st</sup> Cir. 1994).

26 <sup>9</sup> See Motion in Opposition (docket No. **151**).